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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

MUR 6040

CELA
SENSITIVE

Rangel for Congress and Basil Paterson,
in his official capacity as treasurer
National Leadership PAC and Basil Paterson,
in his official capacity as treasurer
Representative Charles B. Rangel
Fourth Lenox Terrace Associates
a/k/a Lenox Terrace Development Assoc.
The Olnick Organization, Inc.)

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FEDERAL ELECTION COMMISSION
SECRETARIAT

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

(1) Find reason to believe that Representative Charles B. Rangel violated 2 U.S.C.

§ 441a(f) by accepting excessive contributions from Fourth Lenox Terrace Associates a/k/a

Lenox Terrace Development Assoc. ("Fourth Lenox"); (2) find no reason to believe that the

Olnick Organization, Inc. ("Olnick") violated 2 U.S.C. § 441b and close the file with respect to

it;

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1 **II. BACKGROUND**

2
3 The Commission previously found reason to believe that Fourth Lenox, a general
4 partnership, violated 2 U.S.C. § 441a(a)(1)(A) and (C) by making excessive in-kind
5 contributions to the Committees, and that the Committees violated 2 U.S.C. §§ 434(b) and
6 441a(f) by accepting and failing to report these contributions. *See* MUR 6040 Factual & Legal
7 Analyses. The Commission based its findings on information indicating that the Committees
8 may have paid less than the usual and normal charge for their office space because they occupied
9 a rent-stabilized apartment under terms and conditions that the landlord did not offer to similarly
10 situated non-political committee tenants. The apartment at issue in this matter is located in a
11 building owned by Fourth Lenox (the "landlord"), which is part of a six-building apartment
12 complex called Lenox Terrace. Each of the six buildings that comprise Lenox Terrace, including
13 Fourth Lenox, are owned by separate general partnerships and managed by the Hampton
14 Management Company ("Hampton"), an affiliate of Olnick.² For many years, Rep. Rangel and
15 his wife have resided in the building in adjoining rent-stabilized apartments located on the 16th
16 floor. In October 1996, Representative Rangel signed a two-year lease for a rent-stabilized one-
17 bedroom apartment on the 10th floor of the same building ("Unit 10U"). The available
18 information indicates that the Committees occupied Unit 10U from shortly after the lease was
19 signed until November 1, 2008. When they vacated the apartment, the Committees were paying

² The term "Olnick" is used in this Report to refer collectively to the managing agents of Fourth Lenox. For purposes of management activities conducted on behalf of Fourth Lenox, there appears to be little, if any, distinction between Hampton and Olnick staff. While Olnick buys, sells and develops properties, it appears that Hampton focuses more narrowly on property management functions; however, as discussed *infra*, Olnick and Hampton staff were both involved in managing the Lenox Terrace complex. The executives we interviewed or deposed often had trouble distinguishing between Olnick and Hampton; the executive staff of both entities even share the same office space in the same building, with Hampton staff using "Olnick.com" email addresses. *See, e.g.*, Filippelli Dep. Tr. at 12-17; Simon Dep. Tr. at 15-19.

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1 a total of \$682 per month (\$341 apiece). The Committees then rented office space several blocks
2 away at the market rate of \$4,000 per month.

3 As discussed below, the evidence obtained in the investigation shows that Fourth Lenox
4 leased rent-stabilized Unit 10U to Rep. Rangel for less than the usual and normal charge because
5 that lease was not made on the same terms and conditions that Fourth Lenox offered other
6 similarly situated non-political committee tenants. The investigation determined that the
7 Committees occupied Unit 10U and used it as office space throughout the period of the lease,
8 from 1996 through 2008, even though the lease specified that the unit "shall be used for living
9 purposes only." Further, the investigation established that Fourth Lenox, through its agents,
10 instituted a "non-primary residency program" in approximately 2003 whereby it sought to
11 increase profits by taking proactive steps to identify tenants who were not occupying their rent-
12 stabilized apartments as their primary residences, and to subsequently deregulate the vacant
13 apartments and rent them for higher rates on the open market. The evidence demonstrates that
14 Rep. Rangel did not live in Unit 10U, but rather used it solely for the purpose of housing the
15 Committees, and that Olnick employees on the premises and at its corporate offices knew this.

16 **III. RESULTS OF INVESTIGATION**

17 The investigation has established that:

- 18 • From the time the Committees first occupied Unit 10U (RFC in late 1996 and the NLP in
19 1998) until November 2008, when they departed, the apartment was used exclusively by
20 the Committees to conduct their regular business, and was never used as a residence by
21 Rep. Rangel;
22
- 23 • Olnick staff, who served as Fourth Lenox's agents in managing the apartment building,
24 were aware of the Committee's use of Unit 10U since approximately 2003;
25
- 26 • In or around 2003, Olnick instituted a "non-primary residency program" to verify
27 whether tenants of rent-stabilized apartments were residing in their units pursuant to the
28 residency criteria set forth in New York's Rent Stabilization Code, 9 NYCRR (New York
29 Rent Codes, Rules and Regulations) Parts 2520-2530 ("Rent Code");

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- If Olnick's investigation confirmed that a tenant had not been residing in his or her rent-stabilized apartment for most of the prior year or longer, the tenant would receive a notice of intent not to renew the lease;
- If the tenant did not vacate the apartment at the expiration of the lease or shortly thereafter, Olnick's practice was to file an eviction action in New York Civil Court based on non-primary residency;
- Once the apartment was vacated and "recaptured," Olnick's practice was to renovate the apartment and attempt to deregulate it pursuant to the Rent Code and rent it at the market rate;
- Olnick never took any action against Rep. Rangel or the Committees regarding the non-residential use of Unit 10U despite having knowledge of its non-residential use;
- Although professional offices were allowed to operate on the first floor, there is no evidence that Olnick permitted the use of rent-stabilized apartments solely for non-residential purposes above the first floor;
- Olnick placed Rep. Rangel on a select list of prominent tenants at Lenox Terrace, whereby they received special attention when legal issues and other problems arose in connection with their tenancies.

Further, on December 2, 2010, the U.S. House of Representatives voted to censure Rep. Rangel for eleven violations of House Ethics rules, one of which included the Committees' use of the rent-stabilized apartment at issue here. The House Ethics Committee had earlier found, based on a two-year investigation, that Fourth Lenox's "tolerance" of Rep. Rangel's use of an apartment as an office "for his campaign in violation of the terms of the lease and the New York City zoning regulations and building Rent Code was a favor or benefit" to Rep. Rangel, "which may be construed by reasonable persons as influencing the performance of his official duties." See Report of the [House Ethics Committee] Adjudicatory Subcommittee dated November 16, 2010, at 6-7, <http://ethics.house.gov/Media/PDF/RangelAttachmentI.pdf>. We

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1 have incorporated facts obtained during the House Ethics Committee investigation into this
2 Report as appropriate.

3 **A. The Committees' Tenancy and Fourth Lenox's Non-Primary**
4 **Residency Program**

5
6 In 1996, Rep. Rangel, who since 1988 had been residing in the building, signed an
7 application for the use of Unit 10U. *See* Fourth Lenox ("FL") Response stamped June 1, 2010,
8 FEC 00001-02 (lease application).⁴ In October 1996, Rep. Rangel signed a lease for Unit 10U
9 stating that "[y]ou shall use the Apartment for living purposes only." *Id.* at FEC 00003 (lease for
10 Unit 10U). The lease also barred Rep. Rangel from subletting Unit 10U without the landlord's
11 "advance written consent," and stated that the landlord may refuse to renew the lease if "the
12 tenant does not occupy the apartment as his or her primary residence." *Id.* at FEC 00005, 00014.
13 In November of 1996, the Committees began using Unit 10U to conduct business, and remained
14 as the exclusive occupants of this space until vacating the premises in 2008. Neither Rep.
15 Rangel, nor any other individual, lived in Unit 10U during that period, and he did not enter into
16 any written sublease with the Committees. Rep. Rangel signed Renewal Lease Forms for Unit
17 10U every two years from 1998 through 2006, with each leasing period running from

⁴ The application document produced by Fourth Lenox, purportedly for Unit 10U, indicated that Rep. Rangel's son Steven would occupy the apartment. However, the document did not identify any unit number and there are differing accounts as to whether Unit 10U was actually intended for use by his son. Harold Griffel, who served as the on-site manager of Lenox Terrace until 2002 and signed the original lease for Unit 10U on behalf of Fourth Lenox, stated in an interview that the apartment was rented by Rep. Rangel for the use of his son. However, Rep. Rangel, in his response to the Statement of Alleged Violation ("SAV") issued by the House Ethics Committee, asserted that his son was planning to live in a different unit adjacent to Rep. Rangel's apartment on the 16th floor, and that a nearly identical copy of the application appears in the file for that unit. Rep. Rangel surmised that the application "was simply misfiled." Rangel Response to SAV at 23, available at <http://ethics.house.gov/Media/PDF/Rangel%20Response%20to%20SAV.pdf>.

1 November 1 and expiring two years later on October 31. *See, e.g., id.* FEC 00021 (1998 lease
2 renewal form for Unit 10U).

3 Prior to approximately 2004, most of the apartments at Lenox Terrace were rent-
4 stabilized, i.e., they were subject to the Rent Code, which limited annual rent increases (set by
5 the Rent Guidelines Board) and entitled tenants to have their leases renewed. However, a tenant
6 had to use the stabilized apartment as his or her primary residence in order to qualify for
7 automatic renewal. In addition, the apartment could be deregulated once the monthly rent
8 reached \$2,000 and it was subsequently vacated. *See* 9 NYCRR § 2520.6(u), 2520.11(k). The
9 Rent Code sets forth various factors that may be considered in determining whether a tenant
10 remains a primary resident, including whether the tenant occupies the unit for an aggregate of
11 less than 183 days in the most recent calendar year.⁵

12 Starting in approximately 2003, Olnick, on behalf of landlord Fourth Lenox, instituted a
13 “non-primary residency program” of actively investigating whether the tenants of record at
14 Lenox Terrace were residing in their rent-stabilized units pursuant to the residency criteria set
15 forth in the Rent Code. This program appears to have been initiated and implemented by Olnick
16 staff, primarily by former executives Neil Rubler and Robert Rissetto. *See* Rissetto Aff. at 1; FL

⁵ Section 2520.6(u) states:

Although no single factor shall be solely determinative, evidence which may be considered in determining whether a housing accommodation subject to this Rent Code is occupied as a primary residence shall include, without limitation, such factors as listed below:

- (1) specification by an occupant of an address other than such housing accommodation as a place of residence on any tax return, motor vehicle registration, driver's license or other document filed with a public agency;
- (2) use by an occupant of an address other than such housing accommodation as a voting address;
- (3) occupancy of the housing accommodation for an aggregate of less than 183 days in the most recent calendar year, except for temporary periods of relocation pursuant to section 2523.5(b)(2) of this Title; and
- (4) subletting of the housing accommodation.

1 Response stamped Aug. 20, 2010, at 2-3.⁶ Prior to that time, although there may have been
2 numerous tenants – in addition to Rep. Rangel – who were not using their apartments as their
3 primary residences, Olnick's main concern in making lease renewal decisions was whether the
4 rent was being paid promptly. *See, e.g.*, FL Response stamped Aug. 20, 2010, at 2.

5 The main objective of the program was to maximize profits for the landlord by
6 recapturing apartments pursuant to the Rent Code so that the apartments could become
7 deregulated and rented at the market rate. Rissetto Aff. at 1; FL Response stamped Aug. 20,
8 2010, at 2; J. Filippelli Dep. Tr. at 184-86.⁷ As a result of the program, approximately 300
9 apartments were deregulated at Lenox Terrace in 2004 and 2005, averaging 50 apartments per
10 building. Rissetto Aff. at 2.⁸ If information showed that the tenant of record had not been using
11 the apartment as his or her residence for the most of the prior year or longer, Olnick's practice
12 was to serve the tenant with a notice of the landlord's intent not to renew the lease. This notice –
13 commonly called a "Golub" notice – was required to be sent between 90 and 150 days prior to
14 the expiration of the lease. *See Golub v. Frank*, 65 N.Y.2d 900 (1985); 9 NYCRR § 2524.2,
15 2524.4. The Golub notice contained facts supporting non-residency and notified the tenant that
16 the landlord did not intend to renew the lease at the end of the current term. Our investigation

⁶ Emails and other documents from 2006 suggest that some Fourth Lenox partners were aware of the program. *See* FL Response stamped Nov. 2, 2010, FEC 02015-34 (e.g., Feb. 7, 2006 email from Rubler discussing the "program").

⁷ Pursuant to the Rent Code, if the Vacancy Allowance, the Individual Apartment Improvements ("1/40 rule") and other criteria increased the legal rent to at least \$2,000, the apartment was then deregulated and rented at market rate. *See, e.g.*, 9 NYCRR §§ 2520.11, 2522. Olnick executives made renovation decisions with a view toward reaching the \$2,000 threshold, so as to ensure that a recaptured apartment was eligible for deregulation. Rissetto Aff. at 2; FL Response stamped Nov. 2, 2010, FEC 02015 (Feb. 7, 2006 email from Rubler discussing amounts spent renovating apartments in order to deregulate them).

⁸ Other documents support Rissetto's figures, e.g., New York's Division of Housing & Community Renewal ("DHCR") produced documents showing that 20 apartments were registered by Fourth Lenox as High Rent Vacancy deregulations on April 1, 2005, and 27 on April 1, 2006 (the actual deregulations would appear to have started as early as April 1 of the prior year). DHCR Response stamped June 10, 2010, Bates 00001-04. *See also* FL Response stamped Nov. 2, 2010, FEC 02110 (chart indicating that most of the deregulations registered by Fourth Lenox in 2005 were actually deregulated and re-rented at market rates in 2004).

1 showed that Olnick began serving Golub notices to tenants of Fourth Lenox in the first half of
2 2003, well before the 2004 Golub period for Unit 10U, which ran from May 31 through July 31,
3 2004.⁹ After receiving a Golub notice, if the tenant did not relinquish the apartment upon the
4 expiration of the lease, Olnick initiated eviction proceedings by sending a notice to the tenant
5 and filing an eviction action in New York Civil Court.¹⁰ Olnick also used independent
6 investigation firms to assist it in identifying candidates for eviction. On a monthly basis, well
7 before the date that rent-stabilized leases were up for renewal, Olnick provided a list of lease
8 tenants to the investigators, who then generated written reports with relevant information about
9 each tenant, such as whether public records indicated multiple "active" (i.e., current) addresses.
10 Rissetto Aff. at 2; FL Response stamped Aug. 20, 2010, FEC 01626-01632; FL Response
11 stamped June 1, 2010, FEC 00039-00069. It also appears that on-site employees at Lenox
12 Terrace were asked to verify residency status regarding all leases up for renewal, which included
13 asking the doormen whether the tenant was residing in the apartment at issue. Rissetto Aff. at
14 2.¹¹ Another tool used by Olnick included comparing signatures by the purported tenant on
15 various documents; e.g., a signature on a renewal form that did not match the original lease could
16 trigger further inquiry. FL Response stamped Nov. 2, 2010, FEC 02108.

17 While Olnick was taking steps to deregulate numerous apartments, it took no action with
18 respect to Rep. Rangel's lease of Unit 10U. Robert Rissetto, the Vice President of Residential

⁹ This information was based on our review of New York Civil Court (Housing Part) cases involving eviction actions filed by Fourth Lenox. Documents from numerous court cases in which Fourth Lenox filed "holdover" petitions are available for review in the Voting Beilot Matters folder. A holdover petition is a court proceeding in which the landlord demands possession of the apartment and requests that the court issue an eviction warrant.

¹⁰ In reviewing holdover proceedings initiated by Fourth Lenox, we found no non-primary residency eviction actions filed between 1996 through 2002; however, Fourth Lenox filed a number of such actions every year from 2003 through 2008, peaking at twelve in 2004.

¹¹ See also FL Response stamped Nov. 2, 2010, FEC 02103 (March 9, 2004 email from Rankin referencing inquiries made to doormen), FEC 02105-07 (email with numerous references to confirmation of residencies by doormen).

1 Properties who was primarily responsible for managing the Olnick properties and implementing
2 the non-primary residency program during the period at issue, stated in an affidavit that
3 management never issued a Golub notice concerning Unit 10U in 2004 or subsequent renewal
4 periods due to Rep. Rangel's "prominence" and because he was included on a "Special Handling
5 List" of high profile tenants. Rissetto Aff. at 3. Although there are differing accounts as to what
6 benefits were accorded this select group of tenants, Rissetto's statement is supported by emails
7 circulated among Olnick management. A February 16, 2005 email from on-site manager Darryl
8 Rankin to Olnick executives states that, per then-CGO Neil Rubler, the tenants on the list were to
9 be "immediately flagged" to "ensure that no legal or collection actions are initiated against any
10 of these apartments without notifying" Rankin in advance. FL Response stamped Sept. 1, 2010,
11 FEC 01638-39, 01684-85.¹² The list attached to the email refers to Rep. Rangel as a U.S.
12 Congressman and identifies each of his rent-stabilized apartments at Lenox Terrace, including
13 Unit 10U. The list also included James Capel, identified as "Rangel Chief of Staff," a resident at
14 Lenox Terrace. Emails between Rissetto and other managers between 2005 and 2007 indicate
15 that they had suspended rent collection actions against Capel for late payment of rent. FL

¹² Fourth Lenox produced numerous subsequent emails containing information concerning the "Special Handling List." *Id.*, FEC 01634-01869. Rissetto stated that the list was assembled in 2003 and 2004 and "reflected a sensitivity by ownership to anything that might not be well-received by these prominent tenants and included making sure that they were not swept up in the system designed to respond to issues like non-primary residency or the non-payment of rent." Rissetto Aff. at 2-3. In an affidavit submitted to the House Ethics Committee, Rubler stated that he did not recall requesting that such a list be prepared, but noted that "Olnick management considered Representative Rangel's tenancy in Lenox Terrace to reflect well on the property." See House Ethics Committee Exhibit #551, available at <http://docs.house.gov/ethics/RangelExhibitsPart12.pdf>. When asked about benefits accorded to tenants on the list, Rubler stated in an interview that a tenant might get special attention, but he could not recall any specific instances. Assistant Superintendent Peter Soundias testified that the purpose of the list was to "show the staff to know who is who in the building, to be nice to them . . . a little nicer [than with other tenants]." Soundias Dep. Tr. at 88. Vice President of Operations Jennifer Filippelli, who was involved in Golub notice decisions from approximately 2007, testified that "all [the list] says to me personally, instead of being on the bottom of the pile, it is on the top of pile to call someone back. It has no other relevance in my job for me personally." Filippelli Dep. Tr. at 136-137.

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Response stamped Sept. 1, 2010, FEC 01698, 01744-68; FL Response stamped Nov. 2, 2010, FEC 02203-05.

Although Fourth Lenox permitted professional offices (e.g., doctors and dentists) to lease and operate out of its first floor units, Olnick responded that it "is unaware of any business or commercial entity that was listed as a tenant of record for any unit above the first floor . . . from 2003-2008," and we found no evidence that rent-stabilized apartments were permitted to be used solely for non-residential purposes above the first floor. FL Response stamped Aug. 19, 2010, at 3. On the contrary, the professional offices located on the first floor appear to have been temporarily exempted from rent-stabilization, meaning that the landlord was permitted to charge market rates.¹³

B. Knowledge of Use of Unit 10U

The investigation showed that Olnick staff at various levels were aware, or likely aware, that the Committees were using Unit 10U for campaign purposes and that Rep. Rangel was not living there. First, although most of the Olnick executives we interviewed or deposed claimed not to have become aware of how Unit 10U was being used until 2008 (after the issue received attention in news articles), former vice-president Robert Risetto stated in his affidavit that he became aware in approximately 2003 that the Committees were occupying Unit 10U, based on visiting the complex and speaking with on-site staff. Risetto Aff. at 3.

Second, it appears that numerous on-site employees were aware around 2004 that the Committees were operating out of the apartment, and the Committees never disguised the fact that they occupied the apartment. The current on-site assistant superintendant knew Unit 10U

¹³ The chart of "deregulating events" produced by the DHCR indicates that seven units on the first floor of the building were "temporarily exempted" from rent stabilization between 2002 and 2005. DHCR Response stamped June 10, 2010, Bates 00002-04.

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1 was being used exclusively by the Committees at that time, and testified that it was "common
2 knowledge" among the doormen, porters and maintenance men. Soundias Dep. Tr. at 66, 77,
3 123-25. Fourth Lenox acknowledged that Olnick's on-site manager Darryl Rankin learned that
4 Unit 10U was being used "as an office" in approximately 2006 or 2007, but "was unaware to the
5 extent [it] was being used . . . and did not inform the executives" at Olnick. FL Response
6 stamped May 11, 2010, at fn. 7. In our interview with him, he indicated that he was aware
7 Rangel campaign personnel were working out of the office, and that they would sometimes call
8 with minor maintenance issues.¹⁴ Walter Swett, the Committees' Executive Director, stated in
9 an interview that Committee staff would occasionally call the on-site management office
10 regarding maintenance issues, identifying themselves as being from Rep. Rangel's office. We
11 obtained emails concerning such issues at Unit 10U sent by Swett and another staffer to the on-
12 site general manager in 2007; the emails were sent from "rangelcampaign.com" addresses and
13 "Rangel Campaign" appears in the text of one email. FL Response stamped Nov. 2, 2010, at
14 FEC 02241-43. Fourth Lenox also produced a 2007 letter on "Rangel for Congress" letterhead
15 and containing the address "40 Lenox Terrace, #10U." *Id.* at FEC 02244. The letter appears to
16 have been delivered to on-site management.

17 Third, the Committees each paid their share of rent (generally split in half) with their own
18 printed checks beginning several years prior to 2004; checks from RFL stated "Rangel for
19 Congress" in large print in the upper left corner; checks from the NLP similarly stated "The
20 National Leadership PAC." FL Response stamped Aug. 20, 2010, FEC 01608-17. The checks,
21 all of which were accepted by Olnick during the period at issue, were signed by Executive

¹⁴ Emails from 2006 further demonstrate Rankin's knowledge of the use of Unit 10U. A July 18, 2006 email from Rankin discussing a maintenance issue states, in the subject line, "Rangel Office." FL Response stamped Nov. 2, 2010, at FEC 02270. A November 22, 2006 email from Rankin states that he had spoken to "Walter Swett from Mr. Rangel's office" about providing a copy of the lease; although the apartment is not mentioned, it is made clear from other emails that Rankin was referring to Unit 10U. *Id.* at 02266-69.

1 Director Walter Swett rather than Rep. Rangel. Fourth Lenox claims that acceptance of the
2 checks does not establish that it knew that RFC and NLP were using Unit 10U as an office
3 because all rent checks were sent directly to a "lock box," where they were then deposited into a
4 bank account. FL Response to RTB Findings, stamped April 15, 2010, at 3. However, the
5 landlord's policy was that the bank would not deposit checks that were in the name of someone
6 other than the tenant of record; the bank would instead send them to the landlord for further
7 review.¹⁵ Accordingly, pursuant to this policy the checks from RFC and NLP would have been
8 subject to further review by agents of the landlord during the period in question, suggesting that
9 higher level staff may have become aware that RFC and NLP were occupying the apartments
10 and made a conscious decision to accept the checks anyway.

11 Fourth, solicitations for contributions to Olnick executives by RFC/NLP Executive
12 Director Walter Swett suggest that certain executives and Fourth Lenox partners may have been
13 aware that Rangel and the Committees occupied apartments at Lenox Terrace in 2006 or earlier.
14 An email dated July 31, 2006 from Swett to Olnick president Bruce Simon, which included an
15 invitation for a Rangel birthday fundraiser with proceeds to benefit NLP, states that "[w]e . . .
16 hope that members of the Olnick organization will support this event as they have in the past."
17 FL Response stamped Nov. 2, 2010, FEC 01963. The emails from Swett list his phone number
18 at Unit 10U and subsequent emails to Simon close with the following: "Walter Swett, Rangel
19 Campaign, 40 West 135 Street – Suite 10U, New York, NY 10037." FL Response stamped

¹⁵ Harold Griffel, the landlord's on-site manager until 2002, stated that checks not in the name of the tenant would be sent to him for verification and approval. He did not, however, recall if checks for Unit 10U were ever sent to him for review. Hampton's current Vice President of Business Operations described a similar policy around 2007: "The change that I made was that I wanted the name to be the same as the bill. If not, they should reject it." Filippelli Dep. Tr. at 111. She testified that checks from RFC and NLP should have been handled in this manner, but that ultimately Hampton would have accepted them because the name "Rangel" was printed somewhere in the "payee caption" (even though he did not sign them). *Id.* at 112-114.

1 Nov. 2, 2010, FEC 01988, 01996.¹⁶ A week later Neil Rubler stated in an email to Simon –
2 which appears to have been “cc’d” to Fourth Lenox partners Allison Rubler (Rubler’s wife) and
3 Meredith Verona – that “We NEED to make a contribution. Let me read the invite and I’ll make
4 a recommendation” (emphasis in original). FL Response stamped Nov. 2, 2010, FEC 01973.¹⁷
5 Although Simon testified that he did not become aware the Committees were occupying Unit
6 10U until 2008, the emails at least show that Swett was not hiding the use of the apartment from
7 higher level individuals.

8 **IV. LEGAL ANALYSIS**

9 The evidence demonstrates that, because Rep. Rangel was not living in Unit 10U, he was
10 not in compliance with the original 1996 lease and the subsequent renewals, which required that
11 the unit serve as a primary residence. In addition, Rep. Rangel should have been included in
12 Olnick’s non-primary residency program and received a non-renewal notice in 2004. As detailed
13 above, Fourth Lenox did not seek to recapture and deregulate Unit 10U as it did with numerous
14 other rent-stabilized apartments that were also not occupied by the listed tenant. By remaining in
15 a rent-stabilized apartment when similarly situated tenants were being forced to relinquish their
16 apartments, the Committees were paying a discounted rent that constituted an in-kind
17 contribution from the landlord, Fourth Lenox.

18 Fourth Lenox claims that the reason Rep. Rangel did not receive a Golub notice
19 concerning Unit 10U, at least in 2006, was that (1) the monthly investigative report listed Unit
20 10U as an “active” (i.e., current) address for Rep. Rangel, (2) the employees at Lenox Terrace
21 confirmed that he “resided in the building,” and (3) nothing in Olnick’s internal database

¹⁶ An August 1, 2007 email solicitation to Simon from an NLP staffer states: “Please mail your check to Rangel Headquarters, 40 West 135th Street – Suite 10U, New York, NY 10037.” *Id.* at FEC 01997.

¹⁷ Subsequent emails discuss the amounts to be contributed by Neil and Allison Rubler and Meredith Verona; FEC reports show that Neil Rubler and Meredith Verona each contributed \$500 to the NLP in 2006.

1 indicated that he had vacated the apartment – “[t]hus, a lease was granted for that apartment.”
2 FL Response stamped Aug. 20, 2010, fn. 6. Regardless of whether the investigative reports
3 provided to Olnick raised suspicions about how Unit 10U was being used (the 2006 report for
4 Unit 10U, under “Active Address(es),” lists phone numbers for both Rep. Rangel and his
5 campaign office), the evidence indicates that numerous on-site Olnick employees, such as
6 doormen, porters, maintenance personnel and at least one executive, were aware around 2004
7 that the Committees were operating out of the apartment. FL Response stamped Nov. 2, 2010,
8 FEC 02150. Moreover, Committee staff did nothing to hide that fact, and consistently
9 represented themselves as Rep. Rangel’s committees during their interactions with Olnick staff,
10 whether requesting services or paying rent with Committee checks. *See, e.g.,* Soundias Dep. Tr.
11 at 77, 123-126; Committee Response stamped Aug. 12, 2010.¹⁸ Also, independent of the
12 monthly investigative reports, on-site employees verified residency status regarding all leases up
13 for renewal, including asking the doormen whether the tenant was residing in the apartment at
14 issue. *Rissetto Aff.* at 2.¹⁹ Accordingly, the failure to serve Rep. Rangel with a Golub notice in
15 2004 would appear to be inconsistent with Olnick’s own procedures.

16 Fourth Lenox and the Committees each submitted responses to the Commission’s reason
17 to believe findings. Both responses, which reiterate their responses to the complaint in this
18 matter, assert that Rep. Rangel was charged the maximum legal rent for Unit 10U, and that a
19 landlord is not prohibited from renting to a tenant who fails to comply with the Rent Code’s
20 provisions; rather, the landlord may choose not to renew the tenant’s lease. However, Fourth

¹⁸ “[T]he rent for Unit 10U was paid with checks issued by the Committees; the landlord approved changes designed to outfit the unit as an office . . . ; the Committees’ staff regularly interacted with the landlord’s building services and management personnel”

¹⁹ *See also* FL Response stamped Nov. 2, 2010, FEC 02103 (March 9, 2004 email from Rankin referencing inquiries made to doormen), FEC 02105-07 (email with numerous references to confirmation of residencies by doormen).

1 Lenox's decision to renew the lease for 10U in 2004 was in stark contrast to its decision not to
2 renew leases for numerous other similarly situated non-political tenants around that time, after
3 which it deregulated those apartments and rented them at market rates. Regardless of whether
4 Fourth Lenox was in compliance with the Rent Code, its disparate actions regarding Unit 10U
5 resulted in the Committees paying less than the usual and normal charge for that space.

6 Although Rep. Rangel's situation may have been somewhat unique in that his primary residence
7 was located elsewhere in the same building, the fact that he was not living in Unit 10U placed
8 him in the same posture as other absentee tenants who were essentially depriving the landlord of
9 the opportunity to deregulate stabilized apartments and increase the rent to market rate.²⁰

10 The benefit of reduced rent started accruing to the Committees on November 1, 2004,
11 when they would have been expected to vacate the premises, had Fourth Lenox served Rep.
12 Rangel with a Golub notice as it did with other similarly situated non-political tenants. The lease
13 renewals and other documents indicate that the Committees paid \$630.08 per month during the
14 two-year period commencing on November 1, 2004, which was increased to \$677.34 per month
15 during the two-year period beginning November 1, 2006. See FL Response stamped June 1,
16 2010, FEC 00037 (2006 lease renewal); FL Response stamped August 20, 2010, FEC 01590
17 (Table for Unit 10U entitled "Lease charges"). We estimate that the Committees would have

²⁰ Two witnesses associated with Olnick, Vice President of Operations Jennifer Filippelli and former outside counsel Robert O'Dell, suggested in response to a hypothetical (since they claimed to have been unaware how Unit 10U was being used during the period in question) that Rep. Rangel's use of Unit 10U somehow represented an unsettled legal issue, i.e., that the law is unclear as to whether an individual is a "non-primary" tenant of a stabilized apartment that he or she uses exclusively for non-residential purposes, when he or she lives in another stabilized apartment several floors apart. See, e.g., Filippelli Dep. Tr. at 54-60. However, the Rent Code makes no such exceptions and New York courts have never created one. In determining whether multiple apartments constitute a single residence, courts have generally examined the tenant's intent as manifested in the tenant's use of the apartment, and the landlord's knowledge of, and acquiescence in, the arrangement. Courts finding in the tenant's favor have focused on the level of the tenant's residential use of both apartments, which distinguishes these cases from the present matter. See, e.g., 138-148 *Vtd. Owners Corp. v. Dillard*, 2007 NY Slip Op. 52498(U) (2007) (where tenant has maintained an ongoing, substantial, physical nexus with two adjacent apartments, they constitute a combined primary residence).

1 paid, on the open market, a monthly rate of approximately \$3,200 in 2004, with annual increases
2 of \$200 per month through 2008.²¹ The following table shows the approximate annual monetary
3 benefit received by the Committees from November 2004 through October 2008, based on the
4 difference between the market rent and the actual combined rent disclosed by RFC and NLP in
5 their FEC reports:

6	2004: \$3,976	(\$6,400 market rate – \$2,421 actual rent)
7	2005: \$34,204	(\$40,800 market rate – \$6,596 actual rent)
8	2006: \$36,499	(\$43,200 market rate – \$6,701 actual rent)
9	2007: \$36,049	(\$45,600 market rate – \$9,551 actual rent)
10	<u>2008: \$33,074</u>	<u>(\$40,000 market rate – \$6,926 actual rent)</u>
11	Total = \$143,805	

12 **A. Liability of Fourth Lenox**

13 Based on the above, it appears that Fourth Lenox allowed the Committees to use a rent-
14 stabilized apartment for which the Committees paid less than they would have for non-rent-
15 stabilized office space; the difference constitutes an in-kind contribution under the Act, *see* 2 U.S.C.
16 § 431(8)(A)(i), since the apartment was provided “at a charge that is less than the usual and normal
17 charge for such goods or services [which include ‘facilities’]” 11 C.F.R. § 100.52(d)(1). *Cf.* AO
18 2006-01 (Pac For a Change) (reduced price for books was the usual and normal charge for bulk
19 purchases directly from the publisher); AO 1994-10 (Franklin Nat’l Bank) (waiver of bank fees for
20 political committees was permitted because it was within the bank’s practice in the normal course of
21 business regarding its commercial customers and is normal industry practice).

22 At all times relevant to this matter, the Fourth Lenox general partnership has owned and
23 operated the apartment building where Unit 10U is located. Olnick and its affiliate Hampton

²¹ Accordingly, the monthly rent for 2008 would be calculated at \$4,000, which is the rate the Committee paid when they moved into their present location in Harlem in 2008. We calculated rental estimates based on the value of similarly sized office space (approx. 800-900 square feet) in the Harlem area during the approximate period at issue. *See, e.g.,* “Transit Center a Downtown Magnet,” *CRAIN’S NEW YORK BUSINESS*, at Vol. 23, Issue 33 (Aug. 13, 2007); “Vornado aims to attract Midtown firms to Harlem,” *CHICAGO TRIBUNE*, Dec. 15, 2004.

1 served as Fourth Lenox's authorized agents in managing the property, which ranged from broad
2 management duties (e.g., leasing apartments, collecting rents and providing property
3 maintenance) to instituting and administering specific policies designed to increase partnership
4 profits, which included the non-residency program.²² Accordingly, the actions of Olnick staff in
5 implementing the program, and in failing to include Unit 10U in the program at the same time it
6 was pursuing other tenants for not using their apartments as primary residences, can be imputed
7 to Fourth Lenox. *See, e.g.*, Restatement (Third) of Agency § 1.01 (2006) (Agency is "the
8 fiduciary relationship that arises when one person (a "principal") manifests assent to another
9 person (an "agent") that the agent shall act on the principal's behalf and subject to the principal's
10 control, and the agent manifests assent or otherwise consents to act."). The general partners are
11 legally responsible for the conduct of Olnick as it relates to this matter, even if not every partner
12 had actual knowledge of the details of the program.²³

²² A January 1, 2005 management agreement between Fourth Lenox (and owners of other Lenox Terrace buildings) states that "owner" Fourth Lenox, appoints Hampton, "c/o The Olnick Organization," as building manager "to provide any and all customary and reasonable management services . . ." FL Response stamped Nov. 2, 2010, FEC 02049-50. Olnick and Hampton have also admitted, on a number of occasions, that Hampton serves as Fourth Lenox's agent and manages the property, in all respects, on behalf of Fourth Lenox. *See, e.g.*, FL Response stamped August 20, 2010, fn. 5 ("Although Hampton signs the lease as the managing agent of Fourth Lenox, the lease is between the tenant and Fourth Lenox."); Simon Dep. Tr. at 22-23, 34, 39-40. The executive responsible for investigating non-residency issues provided the following testimony:

Q. Is it fair to say that Hampton was carrying out these policies on behalf of the landlord?

A. Yes.

Q. Is it fair to say the landlord was giving Hampton and its staff the authority to carry out these policies?

A. Yes.

Filippelli Dep. Tr. at 25.

In addition, Fourth Lenox was identified as the petitioner in all the court actions filed against non-primary tenants that we examined; the documents attached to the petitions, including the Golub notices, were generally signed by an Olnick or Hampton manager underneath the line "Fourth Lenox Terrace Associates, Landlord."

²³ At least a few of the partners appear to have been copied on emails discussing program details. *See, e.g.*, FL Response stamped Nov. 2, 2010, FEC 02015. In any case, when an agent acts within the scope of his or her authority, a principal cannot escape responsibility on the grounds that he lacked knowledge of the agent's actions, or that the actions were unauthorized or unlawful. *See Back v. DeLoitte & Touche*, 144 F.3d 732, 736 (11th Cir. 1998); *see also Meyer v. Holley*, 537 U.S. 824, 829 (2003) (citing *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 756 (1998)).

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1 As a partnership, Fourth Lenox could have contributed up to \$4,200 to RFC during the
2 2006 election cycle and \$4,600 during the 2008 cycle (primary and general election combined),
3 assuming that any contributions exceeding the primary election limits were properly designated
4 for the general election. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(b). This four-year period
5 roughly corresponds to the period between the effective date of the 2004 lease renewal for Unit
6 10U through the expiration date of the 2006 lease, when the Committees vacated the premises.
7 The difference between half the market value of the shared space and the actual rent paid by
8 RFC over the course of the 2004-2006 leasing period was \$33,131 (\$41,600 - \$8,469); therefore,
9 Fourth Lenox exceeded its combined \$4,200 limit to RFC by \$28,931 during the 2006 cycle
10 (\$33,131 - \$4,200).²⁴ The difference over the course of the 2006-2008 leasing period was
11 \$38,112 (\$46,400 - \$8,288); therefore, Fourth Lenox exceeded its combined \$4,600 limit to RFC
12 by \$33,512 during the 2008 election cycle (\$38,112 - \$4,600).²⁵

13 As for NLP, Fourth Lenox was permitted to contribute \$5,000 per calendar year for each
14 year from 2004 through 2008. 2 U.S.C. § 441a(a)(1)(C). The difference between half the
15 market value of the shared space and the actual rent paid by NLP for Unit 10U during each
16 calendar year was \$1,990 in 2004 (\$3,200 - \$1,210), \$17,768 in 2005 (\$20,400 - \$2,632),
17 \$18,193 in 2006 (\$21,600 - \$3,407), \$18,025 in 2007 (\$22,800 - \$4,775) and \$16,587 in 2008
18 (\$20,000 - \$3,413). Accordingly, it appears that Fourth Lenox exceeded its annual contribution

²⁴ We are assuming RFC and NLP shared Unit 10U equally, based on the fact that they each paid the rent in approximately equal portions. Accordingly, we are similarly attributing equal portions of the market value of Unit 10U to each committee.

²⁵ The partners comprising Fourth Lenox are each listed in its June 10, 2010 response (FEC 00075-77). There appear to be eighteen individuals or trusts for individuals, and two LLCs, at least one of which is taxed as a partnership. Although there is evidence that the partners do not equally share in the partnership profits, *see, e.g.*, Simon Dep. Tr. at 68-71, it appears unlikely that any individual partner exceeded his or her limits with respect to the contribution amounts at issue (only a few partners made contributions to NLP or RFC between 2004 and 2008, and these contributions were in amounts of \$1,000 or less). *See* 11 C.F.R. § 110.1(e).

1 limit to NLP by \$12,768 for 2005 (\$17,768 - \$5,000), \$13,193 for 2006 (\$18,193 - \$5,000),
2 13,025 for 2007 (\$18,025 - \$5,000), and \$11,587 in 2008 (\$16,587 - \$5,000).

3 Fourth Lenox has generally maintained that the off-site "management" at Olnick was
4 unaware that the Committees were operating out of Unit 10U or that Rep. Rangel was using it
5 solely for non-residential purposes until 2008 (after the issue became the subject of news
6 articles). *See, e.g.*, FL Response stamped May 11, 2010, at 5. However, 2 U.S.C. § 441a(a) does
7 not include a "knowingly" element in connection with making an excessive contribution, as
8 opposed to 2 U.S.C. § 441a(f), which requires the recipient candidate or committee to
9 "knowingly accept" the contribution. In any case, the investigation uncovered ample evidence
10 that many Olnick employees knew that the Committees were occupying Unit 10U.

11 **B. Liability of Committees and Rep. Rangel**

12 The evidence supports the Commission's reason to believe findings that RFC and NLP
13 violated the Act by accepting excessive in-kind contributions from Fourth Lenox, in violation of
14 2 U.S.C. § 441a(f), and by failing to report the contributions, in violation of 2 U.S.C. § 434(b).
15 Concerning Rep. Rangel, against whom the Commission previously took no action pending the
16 investigation, the evidence indicates that he knowingly accepted excessive contributions, in
17 violation of 2 U.S.C. § 441a(f).

18 Commencing with Rep. Rangel's renewal of the lease for Unit 10U in November 2004,
19 the Committees and Rep. Rangel accepted the benefit of reduced rent by making full use of the
20 apartment for political activities while similarly situated tenants were being served with Golub
21 notices and forced to vacate their apartments. *See, e.g., FEC v. John A. Dramesi for Congress*
22 *Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (a "knowing" standard does not require knowledge
23 that one is violating a law, but merely requires an intent to act; treasurer "knowingly accepted"

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1 excessive contribution even if unaware of donor committee's non-multicandidate status). The
2 Committees' Executive Director Walter Swett stated in an interview that he worked at the office
3 full time and knew it was rent-stabilized. After he received the lease renewal forms (which also
4 indicated that the apartment was stabilized), he would personally take them to be signed by Rep.
5 Rangel.²⁶ In addition, Rep. Rangel signed the renewal leases in 2004 and 2006 on behalf of the
6 Committees with full knowledge that Unit 10U was a rent-stabilized apartment; he also signed
7 the original 1996 lease and all other renewal forms. *See, e.g.*, FL Response stamped June 1,
8 2010, FEC 00037-38 (1998 lease renewal form indicating Unit 10U is a rent-stabilized
9 apartment). As noted *supra*, the lease required Rep. Rangel to use Unit 10U "for living purposes
10 only" and barred him from subletting the apartment without the landlord's "advance written
11 consent," which he never obtained; further, the renewal leases he signed stated that they were
12 subject to the prior terms and conditions. Moreover, Rep. Rangel's congressional office appears
13 to have received complaints from constituents living in Lenox Terrace regarding non-primary
14 proceedings brought against them by the landlord.²⁷ Former Olnick executive Robert Risetto
15 stated that Rep. Rangel's general response, and the response of his staff, was that he was unable
16 to assist tenants who were not actually living in their apartments. Risetto Aff. at 3-4. The
17 Committees note that the House Ethics Committee's Chief Counsel "found no evidence of
18 corruption by or personal financial benefit to Mr. Rangel." Letter from Phu Huynh, dated

²⁶ On one occasion, it appears that Rep. Rangel personally signed the renewal lease for Unit 10U at the on-site management office. *See* FL Response stamped Nov. 2, 2010, FEC 02268.

²⁷ *See* House Ethics Committee SAV at 26, available at <http://ethics.house.gov/Media/PDF/Rangel%20SAV.pdf>. (Rep. Rangel's office "received complaints from constituents living in Lenox Terrace regarding legal actions brought against them by Olnick based on primary residency."). According to House Ethics Committee documents, Rep. Rangel's District Director James Capel met with on-site manager Harry Rankin on behalf of Rangel's constituents "who were planning to strike arising out of Olnick's primary residency policy." *See* <http://docs.house.gov/ethics/RangelMotionandAccompanyingAffirmation.pdf> ("Notice of Motion and accompanying Affirmation").

1 Nov. 18, 2010. We do not dispute the Committee staff's conclusion; however, it is not relevant
2 to whether Rep. Rangel personally accepted in-kind contributions.

3 The facts clearly demonstrate that the Committees accepted in-kind contributions in the
4 form of reduced rent from Fourth Lenox between November 2004 and October 2008. As noted
5 *supra*, Fourth Lenox exceeded its \$4,200 limit to RFC by \$28,931 during the 2006 cycle and its
6 \$4,600 limit by \$33,512 during the 2008 election cycle. Fourth Lenox exceeded its \$5,000
7 calendar year limit to NLP by \$12,768 for 2005, \$13,193 for 2006, 13,025 for 2007, and \$11,587
8 in 2008. Accordingly, Rangel for Congress and the National Leadership PAC each violated
9 2 U.S.C. § 441a(f) by accepting excessive contributions from Fourth Lenox. In addition, in light
10 of his personal involvement, including his role as the tenant of record of Unit 10U and in signing
11 lease renewal forms at the same time that the landlord was refusing to extend the leases of
12 similarly situated non-resident tenants, we recommend that the Commission find reason to
13 believe that Representative Charles B. Rangel violated 2 U.S.C. § 441a(f). See MURs 5517
14 (James Stork) and 5410 (Oberweis) (candidates personally liable for accepting prohibited in-kind
15 contributions in the form of coordinated communications). The Committees also failed to report
16 the in-kinds; specifically, RFC violated 2 U.S.C. § 434(b) by failing to report \$33,131 in in-kinds
17 for the 2006 cycle and \$38,112 in in-kinds for the 2008 cycle, and NLP violated 2 U.S.C.
18 § 434(b) by failing to report its receipt of in-kind contributions of \$1,990 in 2004, \$17,768 in
19 2005, \$18,193 in 2006, \$18,025 in 2007 and \$16,587 in 2008.

20 **C. Liability of Olnick**

21 At the time the Commission made its reason to believe findings against Fourth Lenox,
22 there was not enough information to determine whether respondent Olnick also had potential
23 liability in this matter. See FGCR at 16. Although documents produced by Fourth Lenox during

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1 the investigation identify one of its general partners as "Olnick-Spanu Investments Partners
2 LLC," we uncovered no information linking this entity directly to Olnick or otherwise indicating
3 Olnick has any ownership interest in the building that houses Unit 10U. Olnick's role in this
4 matter was limited to serving as an agent of Fourth Lenox, the owner and landlord, carrying out
5 management functions on behalf of Fourth Lenox (mainly through its affiliate Hampton) but not
6 making any "contribution" under the Act. Since there would appear to be no factual basis for
7 Olnick to have violated the Act in the matter, we recommend that the Commission find no reason
8 to believe that the Olnick Organization, Inc. violated 2 U.S.C. § 441b, and close the file as to it.

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VI. **RECOMMENDATIONS**


1. Find reason to believe that Representative Charles B. Rangel violated 2 U.S.C. § 441a(f).
2. Find no reason to believe that the Olnick Organization, Inc. violated 2 U.S.C. § 441b, and close the file as to it.
- 3.
- 4.
5. Approve the attached Factual & Legal Analyses (2).
- 6.
7. Approve the appropriate letters.

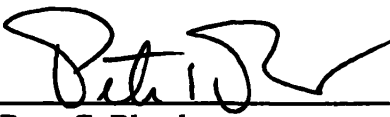
Christopher Hughey
Acting General Counsel

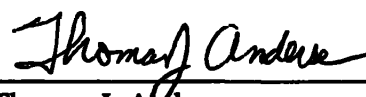
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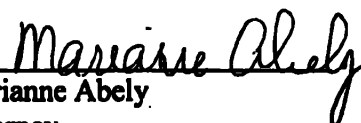

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